

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

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(Small Business/Self-Employed)

from: Nancy Galib
Senior Technician Reviewer
(Procedure & Administration)

subject: Appeals Reconsideration of Refund Claim Denials

This Chief Counsel Advice responds to your request for assistance dated July 12, 2010.
This advice may not be used or cited as precedent.

LEGEND

Taxpayer =

Year 1 =

Year 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

ISSUE

Whether the Office of Appeals can allow a claim for refund after the 2-year period for filing a refund suit under I.R.C. § 6532 has expired.

CONCLUSION

Yes. Appeals may allow a claim for refund after the 2-year period for filing a refund suit under section 6532 has expired. If Appeals affirms any portion of the Service's disallowance of the claims for refund, however, the 2-year period for filing a refund suit in district court or the United States Court of Federal Claims is not extended.

FACTS

The taxpayer filed his Year 1 return on Date 1 and his Year 2 return on Date 2, pursuant to an extension. On Date 3, he timely filed claims for refund for Year 1 and Year 2.

The Service issued Letter 105C, Claim Disallowance Letter, on Date 4. The Letter 105C informed the taxpayer of the Service's denial of his claims for refund, the right to file an appeal with the Office of Appeals, and the right to file a refund suit in district court or the United States Court of Federal Claims within 2 years of the letter date. The Letter 105C also stated that any appeal of the denial did not extend the period to file a refund suit. The taxpayer did not file a Form 907, Agreement to Extend the Time to Bring Suit.

Appeals received the case on Date 5, which was within the 2-year period for filing a refund suit. On Date 6, just after the 2-year period for filing a refund suit expired, Appeals determined that the taxpayer's entire Year 1 refund claim is allowable and that most of the taxpayer's Year 2 refund claim is allowable.

LAW AND ANALYSIS

Section 6511(a) provides that a "[c]laim for credit or refund of an overpayment . . . shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later." Section 6511(b) and Treas. Regs. §§ 301.6511(b)-1(a) and 301.6402-2(a)(1) specify that the Secretary is barred from making a credit or refund after the expiration of the period of limitations unless a claim has been filed within that period.

Pursuant to section 6532(a)(1) a taxpayer must file a suit for refund within 2 years from the date the Service mails the taxpayer notice of the disallowance of the taxpayer's claim for refund. Nothing in the Code or Regulations prevents the Service from allowing a claim for refund after the expiration of the 2-year period for bringing a refund suit as long as the taxpayer timely filed the claim with the Service under section 6511(a). The Internal Revenue Manual, however, instructs that Appeals should not consider a taxpayer's request to reconsider a refund claim that was disallowed if the request for reconsideration was made after the period for bringing suit expired. IRM 8.7.7.12(1). Moreover, Appeals may refuse to reconsider a refund claim if less than 120 days remains in the 2-year period for filing suit when the taxpayer makes the request for reconsideration. IRM 8.7.7.12(2).

Under section 6532(a)(4) "[a]ny consideration, reconsideration, or action by the Secretary with respect to the [refund] claim following the mailing of a notice . . . of disallowance shall not operate to extend the period within which suit may be begun." The Service and the taxpayer can execute Form 907 and agree to extend the limitations period before the expiration of the 2-year period for bringing suit. I.R.C. § 6532(a)(2); IRM 8.7.7.2.3(2).

Here, the taxpayer timely filed his Year 1 return on Date 1 and timely filed his Year 2 return on Date 2, pursuant to an extension, providing the taxpayer with refund statutes of Date 7 and Date 8, respectively. Therefore, the taxpayer timely filed claims for refund for Year 1 and Year 2 on Date 3. Appeals received the taxpayer's case requesting a reconsideration of his refund claim denials on Date 5, when there was more than 120 days remaining in the limitations period for filing a refund suit. Because the taxpayer's claims for refund are timely, and because Appeals received the taxpayer's request for reconsideration before the expiration of the 2-year period for filing a refund suit, Appeals may properly consider and allow the taxpayer's claims.

If Appeals affirms a portion of the Service's disallowance for Year 2, the taxpayer will not be permitted to challenge that disallowance in district court or the United States Court of Federal Claims. The 2-year period for filing a refund suit expired on Date 9 (2 years from the date the Service mailed the taxpayer Letter 105C on Date 4), and the Service and the taxpayer did not execute Form 907 agreeing to extend to the limitations period. Appeals should not issue a notice of claim disallowance if it decides to deny any portion of the taxpayer's claim because this could confuse the taxpayer and could extend the statutory period for filing a refund suit. IRM 8.7.7.12(4).

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Please contact Branch 4 at (202) 622-3630 if you have any questions.